



New York State Board for Professional Medical Conduct

433 River Street, Suite 303 Troy, New York 12180-2299 • (518) 402-0863

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NYS Department of Health*

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NYS Department of Health*

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Office of Professional Medical Conduct

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Vice Chair

Ansel R. Marks, M.D., J.D.
Executive Secretary

September 2, 1999

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Alvin Hershfeld, D.O.
24-135 Memphis Avenue
Rosedale, NY 11422

RE: License No.: 112486

Dear Dr. Hershfeld:

Enclosed please find Order #BPMC 99-223 of the New York State Board for Professional Medical Conduct. This Order and any penalty provided therein goes into effect **September 15, 1999.**

If the penalty imposed by the Order is a surrender, revocation or suspension of this license, you are required to deliver to the Board the license and registration within five (5) days of receipt of the Order to Board for Professional Medical Conduct, New York State Department of Health, Hedley Park Place, Suite 303, 433 River Street, Troy, New York 12180.

Sincerely,

Ansel R. Marks, M.D., J.D.

Executive Secretary

Board for Professional Medical Conduct

Enclosure

cc: Jordy Rabinowitz, Esq.
Garfunkel, Wild and Travis, P.C.
111 Great Neck Road
Great Neck, NY 11201

Daniel Guenzburger, Esq.

**NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

**IN THE MATTER
OF
ALVIN HERSHFELD, D.O.**

**CONSENT
AGREEMENT
AND
ORDER**

BPMC #99-223

**STATE OF NEW YORK)
COUNTY OF NASSAU) ss.:**

ALVIN HERSHFELD, D.O. (Respondent) being duly sworn, deposes and says:

That on or about July 1, 1972, I was licensed to practice as a physician in the State of New York, having been issued License No. 112486 by the New York State Education Department.

My current address is 24-135 Memphis Avenue, Rosedale, New York and I will advise the Director of the Office of Professional Medical Conduct of any change of my address.

I understand that the New York State Board for Professional Medical Conduct has charged me with nine specifications of professional misconduct.

A copy of the Statement of Charges is annexed hereto, made a part hereof, and marked as Exhibit "A".

I admit guilt to the third through eighth specifications and agree that I cannot successfully defend against two of the acts of misconduct alleged in the first specification, in full satisfaction of the charges against me. I hereby agree to the following penalty:

Six months of license suspension (active) and five years of probation pursuant to the terms annexed hereto as Exhibit B. The period of probation shall commence on the date that the

period of active suspension terminates. The period of active license suspension shall commence on September 15, 1999. I further agree that the Consent Order for which I hereby apply shall impose the following conditions:

JER

That, except during periods of actual suspension, Respondent shall maintain current registration of Respondent's license with the New York State Education Department Division of Professional Licensing Services, and pay all registration fees. This condition shall be in effect beginning thirty days after the effective date of the Consent Order and will continue while the licensee possesses his/her license; and

That Respondent shall fully cooperate in every respect with the Office of Professional Medical Conduct (OPMC) in its administration and enforcement of this Order and in its investigation of all matters regarding Respondent. Respondent shall respond in a timely manner to each and every request by OPMC to provide written periodic verification of Respondent's compliance with the terms of this Order. Respondent shall meet with a person designated by the Director of OPMC as directed. Respondent shall respond promptly and provide any and all documents and information within Respondent's control upon the direction of OPMC. This condition shall be in effect beginning upon the effective date of the Consent Order and will continue while the licensee possesses his/her license.

I hereby stipulate that any failure by me to comply with such conditions shall constitute misconduct as defined by New York State Education Law §66530(29)(McKinney Supp 1999).

I agree that in the event I am charged with professional misconduct in the future, this agreement and order shall be admitted into evidence in that proceeding.

I hereby make this Application to the State Board for Professional Medical Conduct (the Board) and request that it be granted.

I understand that, in the event that this Application is not granted by the Board, nothing contained herein shall be binding upon me or construed to be an admission of any act of misconduct alleged or charged against me, such Application shall not be used against me in any way and shall be kept in strict confidence during the pendency of the professional misconduct disciplinary proceeding; and such denial by the Board shall be made without prejudice to the continuance of any disciplinary proceeding and the final determination by the Board pursuant to the provisions of the Public Health Law.

I agree that, in the event the Board grants my Application, as set forth herein, an order of the Chairperson of the Board shall be issued in accordance with same. I agree that such order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to me at the address set forth in this agreement, or to my attorney, or upon transmission via facsimile to me or my attorney, whichever is earliest.

I am making this Application of my own free will and accord and not under duress, compulsion or restraint of any kind or manner. In consideration of the value to me of the acceptance by the Board of this Application, allowing me to resolve this matter without the various risks and burdens of a hearing on the merits, I knowingly waive any right I may have to contest the Consent Order for

which I hereby apply, whether administratively or judicially, and ask that the Application be granted.

DATED 8/2/99

Alvin Hershfeld
ALVIN HERSHFELD, D.O.
RESPONDENT

Sworn to before me
on this 2 day of
Aug 1999

Jeffrey T. Mara
NOTARY

JEFFREY T. MARA
Notary Public, State of New York
No. 4989420
Qualified in Nassau County
Commission Expires 12/27/93

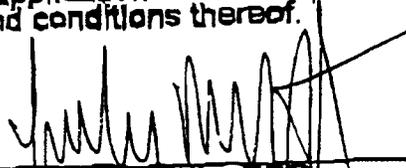
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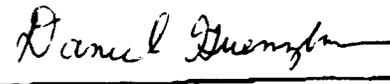
NYS HEALTH DEPT DLA NYC

The undersigned agree to the attached application of the Respondent and to the proposed penalty based on the terms and conditions thereof.

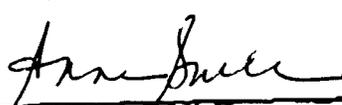
DATE: 8/2/99


Jordy Rabinowitz, Esq.
Garfunkel, Wild and Travis, P.C.
Attorney for Respondent

DATE: 8/20/99


Daniel Guenzburger
Assistant Counsel
Bureau of Professional
Medical Conduct

DATE: 8/25/99


ANNE F. SAILE
Director
Office of Professional
Medical Conduct

NEW YORK STATE DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
ALVIN HERSHFELD, ~~M.D.~~ ^{D.O. APR}

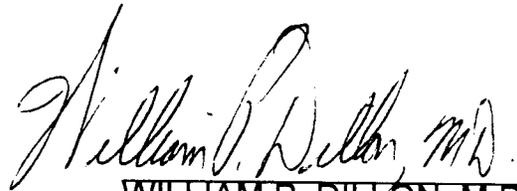
CONSENT
ORDER

Upon the proposed agreement of ALVIN HERSHFELD, M.D. (Respondent) for Consent Order, which application is made a part hereof, it is agreed to and ORDERED, that the application and the provisions thereof are hereby adopted and so ORDERED, and it is further

ORDERED, that this order shall be effective upon issuance by the Board, which may be accomplished by mailing, by first class mail, a copy of the Consent Order to Respondent at the address set forth in this agreement or to Respondent's attorney by certified mail, or upon transmission via facsimile to Respondent or Respondent's attorney, whichever is earliest.

SO ORDERED.

DATED: 8/27/99



WILLIAM P. DILLON, M.D.
Chair
State Board for Professional
Medical Conduct

"EXHIBIT A"

IN THE MATTER
OF
ALVIN HERSHFELD, D.O.

STATEMENT
OF
CHARGES

ALVIN HERSHFELD, D.O., the Respondent, was authorized to practice medicine in New York State on or about July 1, 1972, by the issuance of license number 112486 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. Respondent, a family practitioner, with an office at 24-135 Memphis Avenue, Rosedale, New York, treated Patient A between June 5, 1974 and October 26, 1996 on approximately 70 occasions. In or about February 1993 the Respondent commenced treating Patient A for cardiac abnormalities, which treatment included prescribing Dilacor and Lanoxin and administering Lasix on at least one occasion. On or about February 21, 1997, Patient A presented to another physician, Christian Nahas, D.O., with complaints of heart palpitations and shortness of breath for 2 days. (Patient A and the other patients in the Statement of Charges are identified in the annexed appendix.)
1. In response to both written and oral requests for a copy of Patient A's complete medical record:
 - a. Respondent failed to provide the record to Patient A and/or her representatives, including subsequent

treating physicians Christian Nahas, D.O. and Michael Chesner, M.D.

- i. By failing to provide a copy of Patient A's complete medical record to her subsequent treating physicians, Respondent willfully and/or gross negligently failed to comply with substantial provisions of a state law, Public Health Law§17.
 - b. Respondent failed to provide the Department of Health with a copy of Patient A's medical record within 30 days of a written request.
2. Respondent knowingly and falsely represented to the Office of Professional Medical Conduct that Patient A's records had been destroyed in a flood and that was why he had only provided Patient A's subsequent treating physicians and the Department of Health with three pages of medical records consisting exclusively of laboratory and diagnostic test reports. Respondent knew that his explanation was a fabrication.
3. Respondent failed to maintain a record that accurately reflects the evaluation and treatment of Patient A.

B. On or about and between January 12, 1973 and January 25, 1999 the Respondent served as Patient B's primary care physician during which period he treated Patient B on 82 occasions. On or about January 23, 1992, Respondent ordered a CT scan which demonstrated multiple enlarged lymph nodes within the neck, primarily involving the right side of the neck at the level of the mandible, and nodular densities adjacent to the esophagus and aortic arch. The radiologist's impression was that metastatic disease should be considered and the radiologist recommended obtaining additional imaging studies. Respondent:

1. Failed to appropriately follow-up on the results of the January 23, 1992 CT scan.
2. Respondent failed to maintain a record that accurately reflects the evaluation and treatment of Patient B.

C. On or about and between June 22, 1984 and February 1, 1999 the Respondent treated Patient C on approximately 150 occasions during which period he treated Patient C for diabetes with insulin therapy. Respondent:

1. Failed to order appropriate laboratory tests, including blood glucose monitoring.
2. Failed to appropriately instruct the patient on diet, foot care and the need for periodic eye examinations.
3. Failed to appropriately monitor the patient for neurological, renal

and other complications of diabetes.

4. Failed to maintain a record that accurately reflects the evaluation and treatment of Patient C.

SPECIFICATION OF CHARGES

FIRST SPECIFICATION

NEGLIGENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(3)(McKinney Supp. 1999) by practicing the profession of medicine with negligence on more than one occasion as alleged in the facts of two or more of the following:

1. Paragraphs A, A1, A1(a), A1(b), A3, B, B1, B2, C, C1, C2, C3, and/or C4.

SECOND SPECIFICATION

INCOMPETENCE ON MORE THAN ONE OCCASION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(5)(McKinney Supp. 1999) by practicing the profession of medicine with incompetence on more than one occasion as alleged in the facts of

two or more of the following:

2. Paragraphs A, A1, A1(a), A1(b), A3, B, B1, B2, C, C1, C2, C3, and/or C4.

THIRD THROUGH FIFTH SPECIFICATIONS

FAILURE TO MAINTAIN RECORDS

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(32)(McKinney Supp. 1999) by failing to maintain a record for each patient which accurately reflects the care and treatment of the patient, as alleged in the facts of:

3. Paragraphs A and A3.
4. Paragraphs B and B2.
5. Paragraphs C and C4.

SIXTH SPECIFICATION

MAKING RECORDS AVAILABLE TO A PATIENT

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(40)(McKinney Supp. 1999) by failing to provide access by qualified persons to patient information in accordance with the standards set forth in Public Health Law §18 (McKinney Supp. 1999), as alleged in the facts of:

6. Paragraphs A, A1, and A1(a).

SEVENTH SPECIFICATION
VIOLATION OF A STATE LAW

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(16)(McKinney Supp. 1999) by willfully or grossly negligently failing to comply with substantial provisions of Public Health Law §17(McKinney Supp. 1999), a state law governing the practice of medicine, as alleged in the facts of:

7. Paragraphs A, A1, A1(a) and A1(a)(i).

EIGHTH SPECIFICATION
PROVIDING RECORDS TO THE DEPARTMENT OF HEALTH

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(28)(McKinney Supp. 1999) by failing to respond within thirty days to written communications from the Department of Health and to make available any relevant records with respect to an inquiry or complaint about the licensee's professional misconduct, as alleged in the facts of:

8. Paragraphs A, A1 and A1(b).

NINETH SPECIFICATION
FRAUDULENT PRACTICE

Respondent is charged with committing professional misconduct as defined by N.Y. Educ. Law §6530(2)(McKinney Supp. 1999) by practicing the profession of medicine fraudulently as alleged in the facts of the following:

9. Paragraphs A and A2.

DATED: July 25, 1999
New York, New York

Roy Nemerson
by Daniel G. Gochman

ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct

EXHIBIT "B"

Terms of Probation

1. Respondent shall conduct himself/herself in all ways in a manner befitting his/her professional status, and shall conform fully to the moral and professional standards of conduct and obligations imposed by law and by his/her profession.
2. Respondent shall submit written notification to the New York State Department of Health addressed to the Director of the Office of Professional Medical Conduct, New York State Department of Health, 433 River Street, Suite 303, Troy, NY 12180-2299; said notice is to include a full description of any employment and practice, professional and residential addresses and telephone numbers within or without New York State, and any and all investigations, charges, convictions or disciplinary actions by any local, state or federal agency, institution or facility, within thirty days of each action.
3. Any civil penalty not paid by the date prescribed herein shall be subject to all provisions of law relating to debt collection by New York State. This includes but is not limited to the imposition of interest, late payment charges and collection fees; referral to the New York State Department of Taxation and Finance for collection; and non-renewal of permits or licenses [Tax Law section 171(27)]; State Finance Law section 18; CPLR section 5001; Executive Law section 32].
4. The period of probation shall be tolled during periods in which Respondent is not engaged in the active practice of medicine in New York State. Respondent shall notify the Director of OPMC, in writing, if Respondent is not currently engaged in or intends to leave the active practice of medicine in New York State for a period of thirty (30) consecutive days or more. Respondent shall then notify the Director again prior to any change in that status. The period of probation shall resume and any terms of probation which were not fulfilled shall be fulfilled upon Respondent's return to practice in New York State.
5. Respondent's professional performance may be reviewed by the Director of OPMC. This review may include, but shall not be limited to, a review of office records, patient records and/or hospital charts, interviews with or periodic visits with Respondent and his/her staff at practice locations or OPMC offices.
6. Respondent shall maintain legible and complete medical records which accurately reflect the evaluation and treatment of patients. The medical records shall contain all information required by State rules and regulations regarding controlled substances.

PRACTICE MONITOR

7. Respondent shall practice medicine only when monitored by a licensed physician, board certified in an appropriate specialty, ("practice monitor") proposed by Respondent and subject to the written approval of the Director of OPMC.

- a. Respondent shall make available to the monitor any and all records or access to the practice requested by the monitor, including on-site observation. The practice monitor shall visit Respondent's medical practice at each and every location, on a random unannounced basis at least monthly and shall examine a selection (no less than 20) of records maintained by Respondent, including patient records, prescribing information and office records. The review will determine whether the Respondent's medical practice is conducted in accordance with the generally accepted standards of professional medical care. Any perceived deviation of accepted standards of medical care or refusal to cooperate with the monitor shall be reported within 24 hours to OPMC.
 - b. Respondent shall be solely responsible for all expenses associated with monitoring, including fees, if any, to the monitoring physician.
 - c. Respondent shall cause the practice monitor to report quarterly, in writing, to the Director of OPMC.
 - d. Respondent shall maintain medical malpractice insurance coverage with limits no less than \$2 million per occurrence and \$6 million per policy year, in accordance with Section 230(18)(b) of the Public Health Law. Proof of coverage shall be submitted to the Director of OPMC prior to Respondent's practice after the effective date of this Order.
8. Respondent shall comply with all terms, conditions, restrictions, limitations and penalties to which he or she is subject pursuant to the Order and shall assume and bear all costs related to compliance. Upon receipt of evidence of noncompliance with, or any violation of these terms, the Director of OPMC and/or the Board may initiate a violation of probation proceeding and/or any such other proceeding against Respondent as may be authorized pursuant to the law.